

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

SHANNA GARNER

DEFENDANTS

PROGRESSIVE FINANCIAL SERVICES

(b) County of Residence of First Listed Plaintiff BUCKS

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

CRAIG THOR KIMMEL, KIMMEL & SILVERMAN, P.C.
30 EAST BUTLER PIKE, AMBLER, PA 19002
PHONE: (215) 540-8888 EXT. 103

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 1692 et seq.Brief description of cause:
FAIR DEBT COLLECTION PRACTICES ACT

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

06/01/2015

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

□ • v 携机

MAG. JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

SHANNA GARNER,	:	CIVIL ACTION
	:	
v.	:	
PROGRESSIVE FINANCIAL	:	
	:	
SERVICES, INC.	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

06-01-15

Date

215-540-8888 x 116

Telephone


Attorney-at-law

877-788-2864

FAX Number

Plaintiff, Shanna Garner

Attorney for

kimmel@creditlaw.com

E-Mail Address

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 27 Viking Lane, Levittown, PA 19054

Address of Defendant: 1919 West Fairmont Drive, Building 8, Tempe, AZ 85285

Place of Accident, Incident or Transaction: _____

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases
(Please specify) 15 U.S.C. § 1692 et seq.

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Thor Kimmel, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 06-01-15

Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 06-01-15

Attorney-at-Law

57100

Attorney I.D.#

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 EASTERN DISTRICT OF PENNSYLVANIA

4 SHANNA GARNER,)

5 Plaintiff)

6 v.)

7 PROGRESSIVE FINANCIAL)
8 SERVICES, INC.,)

9 Defendant)
10

Case No.:

) COMPLAINT AND DEMAND FOR
JURY TRIAL

) (Unlawful Debt Collection Practices)

11 COMPLAINT

12
13 SHANNA GARNER ("Plaintiff"), by and through her attorneys, KIMMEL
14 & SILVERMAN, P.C., alleges the following against PROGRESSIVE
15 FINANCIAL SERVICES, INC. ("Defendant"):
16

17 INTRODUCTION

18 1. Plaintiff's Complaint is based on the Fair Debt Collection Practices
19 Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").
20

21 JURISDICTION AND VENUE

22 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d),
23 which states that such actions may be brought and heard before "any appropriate
24 United States district court without regard to the amount in controversy," and 28
25

1 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising
2 under the laws of the United States.

3 3. Defendant conducts business in the Commonwealth of Pennsylvania
4 and as such, personal jurisdiction is established.

5
6 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

7 **PARTIES**

8 5. Plaintiff is a natural person residing in Levittown, Pennsylvania
9 19054.

10
11 6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C.
12 §1692a(3).

13 7. Defendant is a national debt collection company with its corporate
14 headquarters located at 1919 West Fairmont Drive, Building 8, Tempe, Arizona
15 85285.

16
17 8. Defendant is a “debt collector” as that term is defined by U.S.C. §
18 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

19
20 9. Defendant acted through its agents, employees, officers, members,
21 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
22 representatives, and insurers.

23 **FACTUAL ALLEGATIONS**

24
25 10. At all pertinent times hereto, Defendant was hired to collect a

1 consumer debt and attempted to collect that debt from Plaintiff.

2 11. Defendant collects, and attempts to collect, debts incurred, or alleged
3 to have been incurred, for personal, family, or household purposes on behalf of
4 creditors using the U.S. Mail, telephone and/or internet.
5

6 12. The alleged debt Defendant was seeking to collect arose out of
7 transactions that were primarily for personal, family, or household purposes.

8 13. As Plaintiff owes no business debts, the alleged debt could only be
9 personal in nature.
10

11 14. Beginning in August 2014, and continuing through September 2014,
12 Defendant repeatedly contacted Plaintiff on her cellular telephone seeking and
13 demanding payment of the alleged debt.
14

15 15. Finding the calls inconvenient and wasteful of her cellular minutes,
16 Plaintiff demanded that Defendant stop calling.

17 16. Defendant did not update its records and did not cease calling
18 Plaintiff.
19

20 17. Once Defendant was notified to stop calling Plaintiff on her cellular
21 telephone, its continued calls to her cellular telephone were made with the intent to
22 harass her.
23

24 18. Finally, within five days of its initial communication with Plaintiff,
25 Defendant failed to send Plaintiff written notification of her rights to dispute the

1 debt and/or to request verification, as well as her right to request the name and
2 address of the original creditor.

3 **DEFENDANT VIOLATED THE**
4 **FAIR DEBT COLLECTION PRACTICES ACT**

5 **COUNT I**

6 19. Defendant's conduct, as detailed in the preceding paragraphs, violated
7
8 15 U.S.C. § 1692d.

9 a. A debt collector violates § 1692d of the FDCPA by engaging
10 in conduct of the natural consequence of which is to harass,
11 oppress, or abuse any person in connection with the collection
12 of a debt.

13
14 b. Here, Defendant violated § 1692d of the FDCPA by repeatedly
15 contacting Plaintiff over several months after being told to stop
16 calling Plaintiff's cellular telephone to annoy, abuse, and
17 harass Plaintiff.
18

19 **COUNT II**

20 20. Defendant's conduct, detailed in the preceding paragraphs, violated 15
21 U.S.C. § 1692f.

22
23 a. Section 1692f of the FDCPA prohibits debt collectors from
24 using unfair or unconscionable means to collect or attempt to
25 collect any debt.

1 b. Here, Defendant violated § 1692f of the FDCPA when it failed
2 to update its records to stop calling Plaintiff after being told to
3 stop calling her.

4 **COUNT III**

5
6 21. Defendant's conduct, detailed in the preceding paragraphs, violated 15
7 U.S.C. § 1692g(a).

8 a. A debt collector violates § 1692g(a) of the FDCPA by failing to
9 send to the consumer, within five days after its initial
10 communication with a consumer in connection with the
11 collection of a debt, a written notice containing: (1) the amount
12 of the debt; (2) the name of the creditor to whom the debt is
13 owed; (3) a statement that unless the consumer, within thirty
14 days after receipt of the notice, disputes the validity of the debt,
15 or any portion thereof, the debt will be assumed to be valid by
16 the debt collector; (4) a statement that if the consumer notifies
17 the debt collector in writing within the thirty-day period that the
18 debt, or any portion thereof, is disputed, the debt collector will
19 obtain verification of the debt or a copy of a judgment against
20 the consumer and a copy of such verification or judgment will
21 be mailed to the consumer by the debt collector; and (5) a
22
23
24
25

1 statement that, upon the consumer's written request within the
2 thirty-day period, the debt collector will provide the consumer
3 with the name and address of the original creditor, if different
4 from the current creditor.

- 5
6 b. Here, Defendant violated § 1692g(a) of the FDCPA by failing
7 to send written notification, within five (5) days after its initial
8 communication with Plaintiff, advising Plaintiff of her rights to
9 dispute the debt or request verification of the debt or providing
10 her with the name of the original creditor and the amount of the
11 debt.
12

13 WHEREFORE, Plaintiff, SHANNA GARNER, respectfully prays for a
14 judgment as follows:
15

- 16 a. All actual damages suffered pursuant to 15 U.S.C. §
17 1692k(a)(1);
18
19 b. Statutory damages of \$1,000.00 for the violation of the FDCPA
20 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
21
22 c. All reasonable attorneys' fees, witness fees, court costs and
23 other litigation costs incurred by Plaintiff pursuant to 15 U.S.C.
24 § 1693k(a)(3); and
25
d. Any other relief deemed appropriate by this Honorable Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, SHANNA GARNER, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

Date: 06-01-15

By: 

CRAIG THOR KIMMEL

Attorney ID No. 57100

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Ambler, PA 19002

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